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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 MICHAEL L. ZINNA, an individual,
12 Plaintiff,

13 v.

14 CHARLES NEWMARK, an
15 individual,
16 Defendant.

Case No. 2:23-cv-9418 MCS (PVCx)

STIPULATED PROTECTIVE
ORDER

17 1. INTRODUCTION

18 1.1 PURPOSES AND LIMITATIONS

19 Discovery in this action will involve production of confidential, proprietary,
20 or private information for which special protection from public disclosure and from
21 use for any purpose other than prosecuting this litigation may be warranted.
22 Accordingly, the parties hereby stipulate to and petition the Court to enter the
23 following Stipulated Protective Order. The parties acknowledge that this Order does
24 not confer blanket protections on all disclosures or responses to discovery and that
25 the protection it affords from public disclosure and use extends only to the limited
26 information or items that are entitled to confidential treatment under the applicable
27 legal principles. The parties further acknowledge, as set forth in Section 12.3,
28 below, that this Stipulated Protective Order does not entitle them to file confidential

1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
2 followed and the standards that will be applied when a party seeks permission from
3 the court to file material under seal.

4 1.2 GOOD CAUSE STATEMENT

5 In light of the nature of the claims and allegations in this case and the parties'
6 representations that discovery in this case will involve production of confidential
7 and commercially valuable business plans and private and/or sensitive personal
8 information (e.g. personal income statements, personal financial records, personal
9 tax returns, private and/or sensitive communications about the website at issue in the
10 complaint and the allegations involved). Though the truth of the allegations
11 contained on the website is not at issue in this action, discovery requests have been
12 propounded seeking documents about personal and private matters involving the
13 allegations. Discovery has also been propounded seeking income statements, credit
14 card reports, bank records, and other personal and private financial information.
15 These documents include information such as account numbers, assets, transaction
16 history, personal data, and personal matters. These non-public, personal documents
17 are sensitive and should be kept confidential because they are the type of documents
18 that, if publicized, could lead to identity theft or fraud, be misused for libelous or
19 harassment purposes, be misused to embarrass or annoy the parties, or be misused to
20 burden professional endeavors.

21 The business documents that may be sought in the discovery of this action are
22 particularly sensitive and require a "HIGHLY CONFIDENTIAL -- ATTORNEYS'
23 EYES ONLY" designation. Discovery has been sought on the actual damages of
24 this action, which includes lost business opportunities. These documents include
25 loan applications, unique business plans, and other commercially valuable
26 information and data (e.g. investor information and related financial data) that
27 would put the disclosing party at an economic disadvantage if the documents were
28 publicized. These documents are not currently part of the public record and have not

1 been widely shared in order to protect the commercially valuable information
2 contained therein.

3 In order to expedite the flow of information, to facilitate the prompt resolution
4 of disputes over confidentiality of discovery materials, to adequately protect
5 information the parties are entitled to keep confidential, to ensure that the parties are
6 permitted reasonable necessary uses of such material in connection with this action,
7 to address their handling of such material at the end of the litigation, and to serve the
8 ends of justice, a protective order for such information is justified in this matter.
9 The parties shall not designate any information/documents as confidential without a
10 good faith belief that such information/documents have been maintained in a
11 confidential, non-public manner, and that there is good cause or a compelling reason
12 why it should not be part of the public record of this case.

13
14 2. DEFINITIONS

15 2.1 Action: This pending federal lawsuit entitled Michael L. Zinna v.
16 Charles Newmark Case No. 2:23-cv-9418 MCS (PVCx).

17 2.2 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
22 the Good Cause Statement.

23 2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
24 Information or Items: extremely sensitive “CONFIDENTIAL” Information or
25 Items, the disclosure of which to another Party or Non-Party would create a
26 substantial risk of serious harm that could not be avoided by less restrictive means.

27 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
28 their support staff).

1 2.6 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
4 ONLY”.

5 2.7 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced or
8 generated in disclosures or responses to discovery in this matter.

9 2.8 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as
11 an expert witness or as a consultant in this Action.

12 2.9 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.10 Non-Party: any natural person, partnership, corporation, association, or
16 other legal entity not named as a Party to this action.

17 2.11 Outside Counsel of Record: attorneys who are not employees of a
18 party to this Action but are retained to represent or advise a party to this Action and
19 have appeared in this Action on behalf of that party or are affiliated with a law firm
20 which has appeared on behalf of that party and includes support staff.

21 2.12 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.14 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
28

demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”.

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial will be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order will remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition will be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
 4 this Order must take care to limit any such designation to specific material that
 5 qualifies under the appropriate standards. The Designating Party must designate for
 6 protection only those parts of material, documents, items, or oral or written
 7 communications that qualify so that other portions of the material, documents,
 8 items, or communications for which protection is not warranted are not swept
 9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
 11 that are shown to be clearly unjustified or that have been made for an improper
 12 purpose (e.g., to unnecessarily encumber the case development process or to impose
 13 unnecessary expenses and burdens on other parties) may expose the Designating
 14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
 16 designated for protection do not qualify for protection, that Designating Party must
 17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
 19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 21 under this Order must be clearly so designated before the material is disclosed or
 22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
 25 but excluding transcripts of depositions or other pretrial or trial proceedings), that
 26 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" or
 27 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" (hereinafter
 28 "CONFIDENTIAL legend"), to each page that contains protected material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing
2 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins).

4 A Party or Non-Party that makes original documents available for inspection
5 need not designate them for protection until after the inspecting Party has indicated
6 which documents it would like copied and produced. During the inspection and
7 before the designation, all of the material made available for inspection will be
8 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must determine which
10 documents, or portions thereof, qualify for protection under this Order. Then, before
11 producing the specified documents, the Producing Party must affix the
12 “CONFIDENTIAL”, or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
13 ONLY” legend to each page that contains Protected Material. If only a portion or
14 portions of the material on a page qualifies for protection, the Producing Party also
15 must clearly identify the protected portion(s) (e.g., by making appropriate markings
16 in the margins).

17 (b) for testimony given in depositions that the Designating Party identify the
18 Disclosure or Discovery Material on the record, before the close of the deposition all
19 protected testimony.

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the legend
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
24 ONLY.” If only a portion or portions of the information warrants protection, the
25 Producing Party, to the extent practicable, will identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

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5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party will initiate the dispute
10 resolution process (and, if necessary, file a discovery motion) under Local Rule 37.1
11 et seq.

12 6.3 The burden of persuasion in any such challenge proceeding will be on
13 the Designating Party. Frivolous challenges, and those made for an improper
14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
15 parties) may expose the Challenging Party to sanctions. Unless the Designating
16 Party has waived or withdrawn the confidentiality designation, all parties will
17 continue to afford the material in question the level of protection to which it is
18 entitled under the Producing Party's designation until the Court rules on the
19 challenge.

20
21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this
24 Action only for prosecuting, defending, or attempting to settle this Action. Such
25 Protected Material may be disclosed only to the categories of persons and under the
26 conditions described in this Order. When the Action has been terminated, a
27 Receiving Party must comply with the provisions of section 13 below (FINAL
28 DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
9 well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action and who have
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
24 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
25 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
26 will not be permitted to keep any confidential information unless they sign the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
28 agreed by the Designating Party or ordered by the court. Pages of transcribed

1 deposition testimony or exhibits to depositions that reveal Protected Material may
2 be separately bound by the court reporter and may not be disclosed to anyone except
3 as permitted under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions.

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
7 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
8 writing by the Designating Party, a Receiving Party may disclose any information or
9 item designated “HIGHLY CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably necessary
12 to disclose the information for this Action;

13 (b) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (c) the court and its personnel;

17 (d) private court reporters and their staff to whom disclosure is reasonably
18 necessary for this Action and who have signed the “Acknowledgment and
19 Agreement to Be Bound” (Exhibit A);

20 (e) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information; and

25 (g) any mediator or settlement officer, and their supporting personnel, mutually
26 agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification will include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification will include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order will not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party will bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY

CONFIDENTIAL -- ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party will:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party will not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party will bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7
8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection,
12 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
13 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
14 procedure may be established in an e-discovery order that provides for production
15 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
16 (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work
18 product protection, the parties may incorporate their agreement in the stipulated
19 protective order submitted to the court.

20
21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
3 only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information
6 in the public record unless otherwise instructed by the court.

7
8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in paragraph 4, within 60
10 days of a written request by the Designating Party, each Receiving Party must return
11 all Protected Material to the Producing Party or destroy such material. As used in
12 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
13 summaries, and any other format reproducing or capturing any of the Protected
14 Material. Whether the Protected Material is returned or destroyed, the Receiving
15 Party must submit a written certification to the Producing Party (and, if not the same
16 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
17 (by category, where appropriate) all the Protected Material that was returned or
18 destroyed and (2) affirms that the Receiving Party has not retained any copies,
19 abstracts, compilations, summaries or any other format reproducing or capturing any
20 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
23 reports, attorney work product, and consultant and expert work product, even if such
24 materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 4 (DURATION).

1 14. Any willful violation of this Order may be punished by civil or criminal
2 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
3 authorities, or other appropriate action at the discretion of the Court.
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5
6 FOR GOOD CAUSE SHOWN BY THE PARTIES' STIPULATION, IT IS SO
7 ORDERED.
8

9
10 DATED: May 9, 2024



HON. PEDRO V. CASTILLO
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of Zinna v. Newmark 2:23-cv-9418 MCS (PVCx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ **[full name]** of _____ **[full address and telephone number]** as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____